IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2820 OF 2005

Jaysynth Dyechem Ltd. .. Petitioners
V/s
Union of India & Ors. .. Respondents.

Mr.Prakash Shah i/by M/s.DSK Legal for the Petitioners.

Mr.R.V.Desai with Mr.P.S.Jetly & Mr.Y.R.Mishra for the Respondents.

CORAM: S.RADHAKRISHNAN &
A.S.AGUIAR, JJ.

DATE : 22.06.2005.

P.C.:

1. Rule. Rule is made returnable forthwith. The learned Counsel for the Respondents waives service. Heard the learned Counsel for the parties.

2. The brief facts are that the Petitioners had originally approached the Deputy Commissioner, Central Excise, Belapur-I, Division Belapur, for the purpose of obtaining the rebate claim. It appears that the learned Deputy Commissioner, Central Excise Belapur-I, Division Belapur, by his order dated 24.6.2003 which is the order in original, had held that he had no territorial jurisdiction to entertain the claim and rejected the said application solely on the ground of lack of jurisdiction and did not go into the merits of the claim. Aggrieved thereby, the petitioner appears to have approached the Commissioner of Central Excise (Appeals), Mumbai II, who by his order dated 24.9.2003 has clearly held that the Deputy /Assistant Commissioner of Central Excise had jurisdiction to entertain the

rebate claim and accordingly allowed the Appeal and set aside the order of the Deputy Commissioner of Central Excise dated 24.6.2003.

3. It appears that the Respondents herein did not challenge the order passed by the Commissioner of Central Excise (Appeals), Mumbai II and accepted the same, meaning thereby that the jurisdictional issue which was decided in favour of the claimants/Petitioners was not challenged by the Respondents. Thereafter, the petitioners again appeard before the Deputy/ Assistant Commissioner of Central Excise, Belapur-I for sanctioning their rebate claim. The Deputy/ Assistant Commissioner by his order dated 7th March, 2005, after giving personal hearing, again concluded that the Deputy/Assistant Commissioner of Central Excise does not have jurisdiction and accordingly rejected the rebate claim.

4. Ex-facie, the order passed by the Deputy/Assistant Commissioner of Central Excise cannot be sustained, inasmuch as the Commissioner of Central Excise (Appeal) has categorically held by his order dated 24.9.2003 that the said Depupty/Assistant Commissioner of Central Excise, Belapur-I had jurisdiction to entertain the rebate claim. Under these circumstances, we quash and set aside the impugned order dated 7th March, 2005 which is annexed as Exhibit ‘J’ to the petition and remand back the matter to the Deputy /Assistant Commissioner of Central Excise, Balapur-I, Division Belapur. The Deputy/Assistant Commissioner of Central Excise,

Belapur-I is directed to hear the matter strictly on its own merits without going into the issue of jurisdiction, and shall decide the same as expeditiously as possible within a period of six weeks from today. Rule is made absolute accordingly.

(S.RADHAKRISHNAN J.)

(A.S.AGUIAR,J.)